

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	
ZACARIAS MOUSSAOUI)	
a/k/a "Shaqil,")	
a/k/a "Abu Khalid)	
al Sahrawi,")	
)	
Defendant.)	

ORDER

In their Motion to Suppress (Docket #585),¹ standby defense counsel seek to prevent the United States from introducing at trial statements made by Mr. Moussaoui on August 27 and September 9, 2002 to Deputy United States Marshals while they were searching for and retrieving classified materials inadvertently produced to the defendant by the prosecution. Specifically, standby counsel contend that Mr. Moussaoui's statements were the product of an unlawful custodial interrogation, and argue that allowing the United States to use the statements at trial would unfairly permit the Government to reap a windfall from its own negligence.

The United States has not filed a formal opposition to the Motion to Suppress. However, the prosecution previously offered to refrain from using Mr. Moussaoui's August 27 and September 9, 2002 statements in its case-in-chief during the guilt phase; but reserved its right to use the statements to cross-examine the defendant if he testifies, in rebuttal, and during any penalty

¹ Because the Motion concerns the content of "particularly sensitive discovery materials," pursuant to the Protective Order of February 5, 2002, the Motion has been filed under seal.

phase.²

Given the United States' position, we need not resolve whether the statements made by Mr. Moussaoui to Deputy United States Marshals were the product of an unlawful custodial interrogation. As standby counsel concede, even if the statements were elicited without the proper warnings required by Miranda v. Arizona, 384 U.S. 436 (1966), the United States has already agreed to the appropriate remedy - exclusion from the prosecution's case-in-chief.³ The more draconian sanction of complete suppression proposed by standby counsel is not justified by the context in which the statements were obtained. Accordingly, standby counsel's Motion to Suppress is DENIED.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; and standby defense counsel.

Entered this 19th day of March, 2003.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

² See September 18, 2002 letter from Robert A. Spencer to Frank W. Dunham, Jr. (Under Seal).

³ See Motion to Suppress at 20.